

EXHIBIT B

COPY

4145.1
Pldg.

PLD-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STEWART H. FOREMAN (CGB 61149) FIZELAND COOPER & FOREMAN LLP 150 Spear Street 18th Floor San Francisco, CA 94105		TELEPHONE NO.: (415) 541-0200	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER JUL 25 2008 ALAN SLATER, Clerk of the Court BY: <u>F. IBARRA</u> , DEPUTY
ATTORNEY FOR (Name): Defendants KESSLER'S FLYING CIRCUS & TODD DUNNING			
NAME OF COURT: SUPERIOR COURT OF ORANGE COUNTY STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: P.O. Box 1138 CITY AND ZIP CODE: Santa Ana, CA 92702-1138 BRANCH NAME: Central District			
PLAINTIFF: COMMISSION JUNCTION, INC.			
DEFENDANT: Kessler's Flying Circus; Todd Dunning			
GENERAL DENIAL BY FAX		CASE NUMBER: 30-2008-00101025 Dept. C25	

You **MUST** use this form for your general denial if the amount asked for in the complaint or the value of the property involved is \$1000 or less.

You **MAY** use this form if:

1. The complaint is not verified, OR
2. The complaint is verified, and the action is subject to the economic litigation procedures of the municipal and justice courts, EXCEPT


You **MAY NOT** use this form if the complaint is verified and involves a claim for more than \$1000 that has been assigned to a third party for collection.

(See Code of Civil Procedure sections 90-100, 431.30, and 431.40).

1. DEFENDANT (name): Kessler's Flying Circus and Todd Dunning generally denies each and every allegation of plaintiff's unverified second amended complaint.
2. DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint (attach additional pages if necessary):
See attachment containing Affirmative Defenses.

Date: July 25, 2008

Stewart H. Foreman
(TYPE OR PRINT NAME)


(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your claim. (See Code of Civil Procedure sections 428.10-426.40.)

The original of this General Denial must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. (See the other side for a proof of service.)

1 Stewart H. Foreman (CSB#61499
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8 Attorneys for Defendants Todd Dunning and
9 Kessler's Flying Circus, a partnership

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE, CENTRAL BRANCH

12 COMMISSION JUNCTION, INC.

13 Plaintiff,

14 v.

15 THUNDERWOOD HOLDINGS, INC. dba
16 KESSLER'S FLYING CIRCUS; TODD
17 DUNNING; BRIAN DUNNING, and DOES 1
18 through 50, inclusive,

19 Defendants.

CASE NO.: 30-2008-00101025
Judge Randell L. Wilkinson
Dept. C25
Unlimited

**AFFIRMATIVE DEFENSES BY
DEFENDANTS KESSLER'S FLYING
CIRCUS AND TODD DUNNING TO
SECOND AMENDED COMPLAINT
FOR DAMAGES**

AFFIRMATIVE DEFENSES

20 1. As a first affirmative defense, defendants Kessler's Flying Circus and Todd Dunning
21 ("Defendants") allege each and every cause of action in the Second Amended Complaint fails to plead
22 facts sufficient to constitute a cause of action.

23 2. As a second affirmative defense, Defendants allege that CJI and/or eBay reviewed,
24 consented and approved all conduct by Defendants. Therefore, Defendants' conduct was permissible,
25 authorized and justified by Plaintiff and eBay.

26 3. As a third affirmative defense, Defendants allege that they promptly and fully corrected
27 all alleged compliance issues that were brought to their attention by eBay and/or CJI so that at all
28

1 times Defendants were informed and understood that they were in compliance with all relevant CJI
2 and eBay requests and requirements.

3 4. As a fourth affirmative defense, Defendants allege that CJI is barred from any and all
4 recovery as a result of the equitable doctrines of waiver, laches and estoppel in that CJI and eBay
5 knew of, consented to, reviewed and approved all relevant conduct of Defendants. Therefore, CJI is
6 barred now from claiming that Defendants breached any contract or violated any duties or obligations
7 owed by Defendants to CJI or eBay.

8 5. As a fifth affirmative defense, Defendants allege that CJI is barred from any and all
9 recovery as a result of the equitable doctrine of unclean hands in that CJI and eBay knew of,
10 consented to, reviewed and approved all relevant conduct of Defendants. Therefore, CJI is barred
11 now from claiming that Defendants breached any contract or violated any duties or obligations owed
12 by Defendants to CJI or eBay.

13 6. As a sixth affirmative defense, Defendants allege that at all relevant times they acted
14 and performed services for CJI and/or eBay in good faith with the belief and understanding that CJI
15 and/or eBay knew of, consented to, reviewed and approved all relevant conduct of Defendants.
16 Therefore, CJI is barred now from claiming that Defendants breached any contract or violated any
17 duties or obligations owed by Defendants to CJI or eBay.

18 7. As a seventh affirmative defense, Defendants allege that at all relevant times eBay and
19 CJI repeatedly changed and altered their interpretation and application of their contracts regarding the
20 promotional services provided to them by Defendants. At all relevant times, eBay and CJI acted in an
21 arbitrary, capricious and bad faith manner regarding their application and interpretation of the
22 documents that relate to their relationship with Defendants. eBay and CJI initially and for an
23 extended period of time consented to and approved Defendants' promotional activities. Then in May
24 or June 2007, eBay and CJI suddenly in an arbitrary and capricious manner, and without regard for
25 Defendants' interests, withdrew their consent and approval of Defendants' promotional activities, and
26 purported to terminate their relationship with Defendants and failed to pay for Defendants' services.
27 CJI's conduct caused substantial damage to Defendants that is a complete offset to any and all
28 damages alleged by CJI in the Second Amended Complaint.

1 Wherefore, Defendants Kessler's Flying Circus, a partnership, and Todd Dunning, an
2 individual, pray that the Second Amended Complaint be dismissed with prejudice and that Defendants
3 be awarded their attorney fees and costs of suit incurred herein.
4

5 Dated: July 25, 2008

Respectfully Submitted,

FREELAND COOPER & FOREMAN LLP

7
8 By: 

9 Stewart H. Foreman
10 Attorneys for Defendants Kessler's Flying Circus
11 and Todd Dunning
12

CERTIFICATE OF SERVICE

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action; my business address is 150 Spear Street, Suite 1800, San Francisco, California 94105.

On July 25, 2008, I served the following documents described as follows:

GENERAL DENIAL

by placing a true and correct copy thereof enclosed in a sealed envelope addressed to the party of record whose name and address appear below:

Phil J. Montoya, Jr., Esq.
John H. Ernster, Esq.
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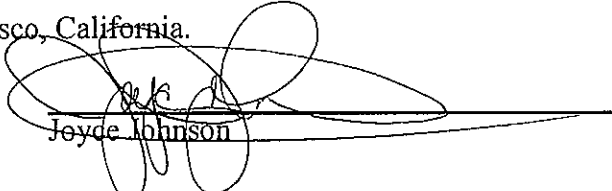
[BY MAIL - CCP § 1013a] I caused such sealed envelope with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California, for collection and mailing to the office of addressee(s) on the date shown herein following ordinary business practice.

[BY FEDEX (Overnight Delivery) - CCP § 1013(c)] I caused such envelope to be delivered to the Federal Express Office in San Francisco, California, with whom we have a direct billing account, to be delivered on the next business day.

[BY E-MAIL or ELECTRONIC TRANSMISSION] . Based on a court order or agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the email addresses listed above. I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[STATE] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 25, 2008, at San Francisco, California.


Joyce Johnson